IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Revision No. 116 of 2003

Kanta Prasad

Versus

State & 2 others

Date of decision : 13.10.2004

For the approval of:-

Hon'ble Mr. Justice J. C. S. Rawat

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Dated – 13.10.04

LSR

HIGH COURT OF UTTARANCHAL

AT NAINITAL

Criminal Revision No.116 of 2003
(Under section 397 read with 401 Cr.P.C. Read with Section 19 of Family Court Act)

Kanta Prasad, S/O Dod Raj.
Lecturer Gandhi Smarak Inter College,
Suraj Nagar, Thakurdwara
P.S.Thakirdwara
District Moradabad

……..Revisionist

Versus

1.State of Uttaranchal
2.Smt.Premwati W/O Sri Kanta Prasad
R/O Hall House No.68/1, Singh Colony,
P.S.Rudrapur,
Udham Singh Nagar
3.Km. Priya Artee, minor aged about 10 years
D/o Kanta Prasad by Kudarti Bahi and mother
Smt.Premwati, W/O Kanta Prasad
R/O Hall House 68/1, Singh Colony,
P.S. Rudrapur,
District Udham Singh Nagar.

……Respondents

Sri S.S. Yadav learned counsel for the revisionist and Shri S.K.Mandal, learned counsel for the Respondents.

Hon'ble J.C.S.Rawat J

This revision petition has been preferred against the judgment and order dated 5.7.2003 passed by the learned Family Judge, Udham Singh Nagar in Suit No.126/2002 Smt.Premwati Vs. Kanta Prasad whereby the learned Family Judge has directed the revisionist to pay Rs.3000/- to respondent no.2 and Rs.2000/-per month to respondent no.3.

2. The brief facts leading to this revision are that the marriage of revisionist Kanta Prasad and respondent no.2 Smt.Premwati was solemnized on 14.5.1987 at Udham Singh Nagar. After the marriage both the revisionist and respondent resided at Bilaspur, District Rampur and they were discharging their matrimonial obligations with each other. Later on the revisionist started demanding the dowry. When the demand was not fulfilled, the revisionist started beating her. When she complained to her brother and other people, they tried to reconcile the matter. Ultimately the matter was settled and the revisionist took respondent no.2 Smt.Premwati to his house. Thereafter again the revisionist started torturing her by demanding the dowry. Ultimately on 2.8.2001, the revisionist deserted Smt.Premwati and Km.Priya Artee and she started living at Udham Singh Nagar with his brother Bhagwan Das. It is further alleged in the application that the revisionist is getting about Rs.12,000/- as salary per month. The revisionist is also earning Rs.10,000/- per month from tuitions. Thus the revisionist earns a total sum of Rs.22,000/- per month. Respondents have no means to maintain herself and filed the application for maintenance under Section 125 Cr.P.C.

3. The respondents filed the objections against the application in which it is admitted that the marriage took place in between the parties and it is also admitted that Km.Priya Artee Respondent no.3 is his daughter. He has denied that the respondent was

deserted by him and she was subjected to cruelty for the dowry. He has further alleged that he his ready to keep them with him. He further alleged that he earns only Rs.6500/- per month and he did not undertake the tuitions. He has challenged the jurisdiction of the Udham Singh Nagar Court and he alleged that the respondent is residing permanently in Bilaspur where his father resides. The respondents are not residing at Udham Singh Nagar. The revisionist has further alleged that the respondent no.2 Smt.Premwati is earning Rs.3000/- per month salary and she is a teacher in Navchetna Siksha Sadan, Bilaspur.

4. In support of the application, the Respondent no.2 Smt.Premwati examined herself as P.W.1 and supported the contention of the application. She also produced Bhagwan Das her brother as P.W.2 who has stated in his evidence that the revisionist used to demand the dowry and she was subjected to the cruelty. He has further stated that in his evidence that on 2.8.2001, she was forced to leave the revisionist's house and the respondent no.2 Smt.Premwati and respondent no.3 Km.Priya Artee are living with him at Rudrapur and she is not a teacher in Bilaspur. She also adduced the evidence of Budhsen P.W.3 who has stated that as and when respondent no.2 visited her parental house she had been complaining that the revisionist demanded dowry and she was subjected to cruelty and she further stated that a Panchayat was convened to settle the matter earlier.

5. The revisionist examined himself and he supported the averment of the written statement. He has further stated in his evidence that he has filed a suit under Section 9 of the Hindu Marriage Act in the Moradabad Court and he has further admitted that he earns Rs.10000/- per month. The revisionist also adduced the evidence of Baldev Singh as D.W.2 who has stated that the respondet no.2 was never subjected to cruelty. Chandra Pal was produced as D.W.3 by the revisionist who stated that Bhagwan Das and his sister Premwati were never tenant in his house and he knows Kanta Prasad for 4 and 5 years. D.W.4 Shri Ram Pal has also stated in his evidence that Premwati and Bhagwan Das were never his tenant at Rudrapur.

6. I have heard Mr.S.S.Yadav learned counsel for the revisionist and Shri S.K.Mandal, learned counsel for the respondent no.2 and 3 and AGA for respondent no.1.

7. At the outset it need to be mentioned that it is not disputed that the applicant and respondent no.2 are husband and wife and respondent no.3 is daughter of the revisionist and respondent no.2. At the first instant it has to be decided whether the respondent no.2 Smt.Premwati and respondent no.3 Km.Priya Artee had proved that she was subjected to cruelty or not or whether she was deserted by the revisionist. The evidence of P.W.1 and P.W.2 sufficiently proved this fact that she was subjected to cruelty and she was deserted by her husband. It is further proved that the

revisionist had neglected to maintain to respondent no.3 without any cause. The Trial Court has rightly held that both the respondents had been deserted without any justifiable cause. I find no reason to interfere with the finding of the learned Lower Court in this regard.

8. Now it has to be seen as to what is the amount which the revisionist is getting from his salary. The learned Trial Court has held that the revisionist had been getting Rs.10,000/- per month as salary. It is the admission of the revisionist. I find no reason to interfere with the finding of learned Trial Court that the respondent no.2 Smt.Premwati was getting Rs/10,000/- as salary. It is sufficiently supported by the admission of the revisionist.

9. Now the learned counsel for the revisionist contended that the Court of the Udham Singh Nagar had no jurisdiction to entertain the application under section 125 Cr.P.C. as she was not residing at Udham Singh Nagar. He has further submitted that the respondent no.2 refuted the contention and contended that she was living with his brother at the relevant time at Udham Singh Nagar. I have gone through the record and perused the finding of the learned Trial Judge. The revisionist had filed a ration card of the year 1999 which reveals that the respondent no.2 had been residing at Bilaspur. It is relevant to mention here that at the relevant time she was living with her husband. It is natural that her name will find place in the ration

card. Dispute arose in the year 2002. In the Parivar Register, it has been shown that she was residing along with her husband. Naturally when the marriage took place they were residing together. This fact does not prove that now she is residing at Bilaspur. The learned counsel for the revisionist further relied upon an affidavit filed in the year 2003. The evidence of the respondent no.2 Smt.Premwati and respondent no.3 Km.Priya Artee that they were residing at Rudrapur with the brother of respondent no.2, Smt.Premwati is beliable. The evidence of revisionist is not beliable. Section 126 of Cr.P.C. sub clause (1) provides that ***"Proceedings under section 125 may be taken against any person in any district-***

a). where he is, or

b). where he or his wife resides, or

c). where he last resided with his wife, or as the case may be, with the mother of the illegitimate child."

10. The Hon'ble Supreme Court has held in Mst.Jagir Kaur and another Vs. Jaswant Singh AIR 1963 Suprme Court 1521 (V 50 C 223) as under –

> *"The third expression is the word "is". It is inserted between the words "resides" and "last resided". The word, therefore, cannot be given the same meaning as the word "resides" or the expression "last resided" bears. The meaning of the word is apparent if the relevant part of the sub-section is read. It reads : "Proceedings under this section may be taken against any person in*

any district where he…….is……." The verb "is" connotes in the context the presence or the existence of the person in the district when the proceedings are taken. It is much wider than the word "resides" : to is not limited by the animus manendi of the person or the duration or the nature of his stay. What matter is his physical presence at a particular point of time. This meaning accords with the object of the chapter wherein the concerned section appears. It is intended to reach a person, who deserts a wife or child leaving her or it or both of them helpless in any particular district and goes to a distant place or even to a foreign country, but, returns to that district of a neighboring one on a casual or a flying visit. The wife can take advantage of his visit and file a petition in the district where he is during his stay. So too, if the husband who deserts his wife, has no permanent residence, but is always on the move, the wife can catch him at a convenient place and file a petition under S.488 of the Code. She may accidentally meet him in a place where he happens to come by coincidence and take action against him before he leaves the said place. This is a salutary provision intended to provide for such abnormal cases. May illustrations can be visualized where the utility of that provision can easily be demonstrated."

11. In view of the above discussion, I am completely in agreement with the finding of the Learned Family

Judge. I do not find any ground to interfere in this judgment and order dated 5.7.2003 passed by the learned Family Judge Udham Singh Nagar.

12. Considering the circumstances of the case, the revision lacks merits and is liable to be dismissed and accordingly it is dismissed.

(J.C.S. Rawat, J.)

13.10.2004

P.Anjali